

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.369 OF 1990

The State of Maharashtra : Appellant.

versus

1. Deepak Babaji Jagtap, age 18]
2. Ashok Narayan Shedage, age 18]
3. Dinesh Shankar Shedage, age 21] Respondents
4. Jaggu @ Jaywant Sahadeo] (Org.Accused
Jadhav, age 21] Nos.1 to 5)
5. Tulaji Narayan Jagtap, age 47]
All residents of Kinjroli]
Budruk, Taluka Mahad,]
Dist. Pune.]

Mr.P.S.Hingorani, APP, for the State.

Mr.M.A.Patil, Advocate appointed for Respondent
Nos.1,2, 4 and 5.

Respondent No.3 dead.

CORAM : D.G.DESHPANDE

S.R.SATHE, JJ.

DATED : FEBRUARY 20, 2007.

JUDGMENT [PER D.G.DESHPANDE, J.]

1. In this matter We had asked the learned APP to verify from the Investigating Officer of the concerned police station as to what happened to the counter case i.e. whether the trial was completed and what was the judgment and whether the benefit under the Probation of Offenders Act was given to the accused in that case. Today, the learned APP has filed report of the Sr.Police Inspector, Mahad City Police Station dated 12th February 2007 along with the certified copies of the papers including charge sheet and compromise application between the complainant and accused wherein the trial Court allowed compounding of the offence and acquitted the accused.

2. This appeal is filed by the State against the order of the learned 2nd Addl.Sessions Judge, Raigad-Alibag because even though the trial Court convicted the accused, they were ordered to be released under Section 6 of the Probation of Offenders Act.

3. When in fact, there were counter cases

and in other counter case, as is revealed now, the matter was compromised and the accused were acquitted, then We do not find any illegality in the order of the trial Court in giving the benefit under the Probation of Offenders Act to the accused/respondents in this appeal.

4. However, there is a technical flaw in the operative part of the judgment of the trial Court. The accused/respondents have been held guilty under Section 326 read with other sections of the Indian Penal Code. When similar issue was raised before us, We held on the basis of the judgment of the Supreme Court in the case of **Jagdev Singh and another v/s. State of Punjab reported in AIR 1973 SC 2427**, that since the offence under Section 326 of the Indian Penal Code is punishable for life imprisonment, benefit of Probation of Offenders Act cannot be given. Therefore, so far as operative part of the judgment of the trial court is concerned, the same is required to be modified because, if the court found the accused guilty under Section 326 of the Indian Penal Code, then benefit under Probation of Offenders Act cannot be and could not have been given to the accused.

5. Since in our opinion, when the accused have been convicted under Section 304 Part II of the Indian Penal Code, it was not necessary to convict them under Section 326 of the Indian Penal Code and since maximum sentence prescribed under Section 304 Part II is ten years, no illegality was committed by the trial Court in granting benefit under the Probation of Offenders Act to the accused/respondents. In this view of the matter, this appeal filed by the State is required to be dismissed. However, the findings against the accused about Section 326 of the Indian Penal Code is set aside and they are held guilty under other Sections of the Indian Penal Code excluding Section 326. Hence no interference is called for in the order of the trial Court granting benefit of Probation of Offenders Act. We, therefore, pass the following order :-

:ORDER:

Appeal of the State is dismissed.

Accused/Respondent No.3 is dead. Appeal

against him was already abated as per order dated 21.2.1994.

Accused/respondents are not held guilty under Section 326 of the Indian Penal Code.

Rest part of the Judgment of the trial Court about execution of bond etc. to remain as it is.

Accused are on bail. Their bail bonds stand cancelled.

[D.G.DESHPANDE, J]

[S.R.SATHE, J]